



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, LRE

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply with the Act – Section 62; and
2. An Order suspending or setting conditions on the landlord’s right to enter the rental unit – Section 70.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Preliminary Matter

At the onset of the Hearing the Landlord corrected the spelling of her last name. With the Landlord’s consent the application has been amended to correctly set out the Landlord’s last name.

### Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord comply with the Act?

Is the Tenant entitled to a restriction on the Landlord’s right of entry?

### Background and Evidence

The tenancy started on or about August 2013 with a subsequent tenancy agreement entered into for a fixed term to January 31, 2014. Subsidized rent of \$140.00 is payable

monthly. The tenancy agreement provides for no smoking anywhere in the building, unit or patio.

The Tenant states that the Landlord has served him notices and documents by posting them on his door or presenting them to him when he opens the door to the Landlord.

The Tenant states that the Landlord has also on one occasion put a notice under his door. The Tenant states that the Landlord can only serve documents and notices to his mailbox by mail or by hand. The Landlord states that they have served the Tenant as provided under the Act and that they have not carried out any service by placing materials under the door of the unit.

The Tenant states that the Landlord has been making unreasonable inspections of his unit and seeks to limit the Landlord's right of monthly inspections. The Tenant states that the Landlord inspected his unit in September and October 2014 to see if he was smoking in the unit. The Tenant states that during the October 2014 inspection the Landlord also questioned guests that were present asking their identity and residence. The Tenant states that monthly inspections and behavior of the Landlord are inconvenient, unreasonable and amount to an invasion of his privacy.

The Landlord states that they are carrying out and intend to continue carrying out monthly inspections of the unit to ensure that the Tenant is not smoking in the unit. The Landlord states that the Landlord witnessed the Tenant smoking in his unit in June 2014 and other tenants have complained on a daily basis about the Tenant smoking both on the patio and the unit. The Landlord states that since the start of the monthly inspections the numbers of complaints have been reduced to once every few weeks and that the inspections are necessary to ensure the Tenant's adherence to the non-smoking requirement. The Landlord states that given the health concerns of other tenants and unit damage from the smoke the Landlord considers the non-smoking clause to be a material term of the tenancy that the Landlord will strictly maintain. The Landlord states that they intend to carry out these inspections until the tenancy ends. The Landlord states that during the October 2014 inspection they greeted the Tenant's guests, one of whom they knew, and asked the other person if they were a resident.

### Analysis

Section 88 of the Act provides that all documents, other than those referred to in section 89, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 89 of the Act provides that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I set out the above sections to inform the Tenant of approved methods of service. Although the Tenant's evidence is that the Landlord served him once by placing materials under the door, I found the Landlord's evidence of service to be credible. As the Tenant has not provided any other evidence that the Landlords have served the Tenant in a way not permitted by the Act, I find on a balance of probabilities that the Tenant has not substantiated an entitlement to an order that the Landlord comply with the Act in relation to its service methods. I therefore dismiss this claim.

Section 29(2) of the Act provides that a landlord may inspect a rental unit monthly in accordance with Section 29(1)(b) set out as follows: at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Given the Landlord's direct evidence of the Tenant smoking in the unit, the indirect evidence of numerous complaints, albeit significantly reduced since the past couple of inspections, and noting that the Tenant did not, in either oral evidence or written submissions, explicitly deny smoking in the unit, I find that the purpose of the inspections to date have been reasonable. I find therefore on a balance of probabilities that the Tenant has not substantiated that the Landlord has acted contrary to or out of

compliance with the Act and I dismiss the Tenant's claim for an order of compliance or an order restricting the Landlord's right of entry under the Act.

Although it is undisputed that the Landlord enquired about the residence of one of the Tenant's guests while conducting an inspection, as this occurred only once and in the context of the Landlord knowing the other guest present, I find that an order restricting the Landlord over this incident is not warranted. Instead I strongly encourage the Landlord, when carrying out an inspection, to conduct itself in a manner that protects the Tenant's right to privacy to the furthest extent possible. I also caution the Landlord that without any reasonable basis to conduct an inspection for smoking, such as a complaint by a witness of smoking, continuing inspections to maintain compliance could become unreasonable in the face of the Tenant's right to privacy and freedom from disturbance.

As the right to privacy is a continuing right, the Tenant remains at liberty to make an application should that right be breached by the Landlord in the future.

### Conclusion

The Tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 19, 2014

---

Residential Tenancy Branch

